
OLR Bill Analysis

HB 6694

AN ACT CONCERNING THE INHERITANCE RIGHTS OF A CHILD WHO IS BORN AFTER THE DEATH OF A MARRIED PARENT.

SUMMARY:

This bill provides certain inheritance rights to a child conceived and born after the death of one of his or her married parents (i.e., a posthumously conceived child). If the deceased parent had a valid will, the bill gives a posthumously conceived child the same rights the law provides to a child born after a parent's will was executed. If the deceased parent did not have a will (i.e., intestate), the bill includes a posthumously conceived child among the children to whom the residue of an intestate estate must be distributed by law.

To qualify for these rights, the bill requires a written document signed and dated by both parents, specifically authorizing the surviving spouse to use the decedent spouse's genetic material to posthumously conceive a child, who must be in utero within one year of the parent's death.

The bill also allows the representative of a posthumously conceived child to bring an action for an unsatisfied obligation against the other estate beneficiaries within the applicable statute of limitations. It deems any final payment and asset distribution by an estate fiduciary who has no knowledge of the existence of a posthumously conceived child to have been made in good faith.

EFFECTIVE DATE: October 1, 2013

ELIGIBILITY REQUIREMENTS

For property distribution purposes, the bill deems a posthumously conceived child to have been born in the decedent spouse's lifetime and after the execution of his or her will, if the child or his or her representative proves by clear and convincing evidence that:

1. the decedent spouse executed a written document that: (a) specifically authorizes the use of his or her genetic material to posthumously conceive a child, (b) specifically authorizes his or her spouse to exercise custody, control, and use of the genetic material in the event of his or her death, and (c) was signed and dated by the decedent spouse and the surviving spouse and
2. the posthumously conceived child was in utero within one year of the decedent spouse's death.

The bill requires (1) the surviving spouse to provide a copy of this document to the fiduciary of the decedent spouse's estate within 30 days of the death and (2) the fiduciary to include the document in the inventory of the deceased's property required by law.

INHERITANCE RIGHTS

Failure to provide for Children Born or Adopted after the Execution of a Will

If a parent fails to provide for a child born or adopted after the parent's will was executed, the law entitles the omitted child to a share in the parent's estate under certain circumstances. The bill extends these inheritance rights in the same manner to posthumously conceived children who were not provided for in the deceased parent's will.

Thus, if there were no living children when the will was executed, the posthumously conceived child receives a share in the estate equal to what the child would have received had the parent died intestate, unless the will devised or bequeathed all or substantially all of the estate to the surviving spouse who is entitled to take under the will.

If there were one or more children living when the will was executed, and the will devised or bequeathed property or an interest in property to one or more of the then-living children, the posthumously conceived child receives the share of the estate that the child would have received had the deceased parent included all omitted after-born and after-adopted children with the children who were provided for under the will and had given an equal share of the estate to each child,

subject to certain restrictions (see BACKGROUND).

Intestate Estate

By law, when a person dies without a valid will (i.e., intestate), after the distribution of the estate has been made to the surviving spouse, the residue of the real and personal estate must be distributed equally among the children, with certain exceptions. The bill includes posthumously conceived children among the children to whom the residue of an intestate estate must be distributed.

ACTION AGAINST BENEFICIARIES

By law, an estate's beneficiary is liable for unpaid expenses for administering the estate, funeral expenses of the decedent, all taxes for which the estate is liable, and claims that were not satisfied from the estate's assets. The bill allows a posthumously conceived child's representative to file an action against the beneficiaries for an unsatisfied obligation to a beneficiary entitled to property. The representative does not have to present the claim to the fiduciary, but must file the action within (1) the optional 90-day notice if given by the fiduciary or (2) the statute of limitations applicable to such a claim under law.

Distribution of Assets by Fiduciary in Good Faith

Under the bill, if a claim is made for a posthumously conceived child's entitlement to property, any payment or distribution of assets by a fiduciary is deemed to have been made in good faith unless the fiduciary had knowledge of the child's existence at the time the payment was made or the assets were distributed.

BACKGROUND

Fiduciary

A fiduciary is an individual, corporation or association holding assets for another party, often with the legal authority and duty to make decisions regarding financial matters on behalf of the other party. A fiduciary may be an executor, administrator, trustee, conservator, or guardian.

Children Born or Adopted after Execution of Parent's Will

By law, an omitted child born or adopted after the execution of a parent's will, including any child born as a result of consented artificial insemination, is entitled to a share in the deceased parent's estate, unless the omission was intentional or the omitted child was otherwise provided for. If the will devised or bequeathed property to one or more then-living children, the omitted child's share of the estate:

1. is limited to a share of the portion of the estate made to the then-living children under the will and
2. must be of the same character, whether equitable or legal, present or future, as that devised or bequeathed to the then-living children under the will.

If there are not enough assets to satisfy the provisions of the will, in the abatement of the devises and legacies of the then-living children, the character of the will must be preserved.

If it appears from the will that the intention was to make a limited provision which specifically applied only to the living children at the time the will was executed, the after-born or after-adopted child succeeds to the portion of such testator's estate as would have passed to such child had the testator died intestate.

Related Case

In *Astrue v. Capato*, 132 S.Ct. 2021 (2012), the U.S. Supreme Court found that twins conceived after their father's death were ineligible for Social Security survivor benefits. The Court agreed with the Social Security Administration that, in order to be eligible for benefits, a person must either qualify as a child of the deceased insured parent under state intestacy laws (the laws governing succession to estates of those who die without a valid will) or satisfy one of the following statutory alternatives:

1. if the applicant is a son or daughter of an insured deceased individual, but does not qualify as a child under state intestacy law, he or she must demonstrate that both parents went through

a marriage ceremony that would have been valid except for certain legal impediments (42 USC § 416(h)(2)(B));

2. the insured deceased parent must have (a) acknowledged in writing that the person is his or her son or daughter; (b) been decreed by a court to be the person's father or mother; or (c) been ordered to pay child support (42 USC § 416(h)(3)(C)(i)); or
3. the person must prove that the insured deceased individual was his or her parent and was living with or contributing to his or her support when the insured individual died (42 USC § 416(h)(3)(C)(ii)).

In this case, the twins could not inherit under the relevant state's intestacy law (i.e., Florida) and could not qualify under the statutory alternatives.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 39 Nay 5 (04/19/2013)